

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL
ILLINOIS
COMMERCE COMMISSION
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Illinois Commerce Commission, :
On its Own Motion, :

Proceeding under Section 16-112(m) of the :
Public Utilities Act to determine whether to :
continue or terminate the neutral-fact-finder :
procedure. :

No. 01-0053 CHIEF CLERK'S OFFICE

COMMENTS OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS

Pursuant to the schedule approved by the Hearing Examiner in this proceeding, Illinois Industrial Energy Consumers (IIEC) offer the following comments with regard to whether the neutral-fact-finder (NFF) procedure should be continued or terminated.¹ The IIEC companies in this proceeding do not believe the Commission is empowered to completely terminate the NFF procedure under current circumstances, nor do they believe it should be terminated. Section 16-112(m) provides in pertinent part:

“...that if each electric utility serving at least 300,000 customers has placed into effect a tariff that provides for a determination of market value as a function of an exchange traded or other market traded index, options or futures contract or contracts, then the Commission can require any other electric utilities to file such a tariff, and can terminate the neutral fact-finder procedure for the periods covered by such tariffs.” (220 ILCS 5/16-112(m)) (Emphasis added)

Section 16-112(a) of the Act provides for a determination of market value:

“...in accordance with (i) a tariff that has been filed by the electric

¹IIEC includes A. E. Staley Manufacturing Company; A. Finkl & Sons Co; Abbott Laboratories, Inc; Archer-Daniels-Midland Company; Cargill, Inc; Caterpillar Inc; Continental General Tire Company; Corn Products International; Equistar Chemicals, L.P.; Ethyl Corporation; Ford Motor Company; Granite City Steel Division of National Steel Corporation; Illinois Cement Company; LTV Steel Company; Modern Drop Forge Company; Monsanto Company; Motorola, Inc; Olin Corporation; Solutia, Inc; and Spectrulite Consortium, Inc.

utility with the Commission pursuant to Article IX of this Act, and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, or (ii) in the event that no such tariff has been placed into effect for the electric utility, or in the event such tariff does not establish market values for each of the years specified in the neutral fact-finder process described in subsections (b) through (h) of this section, a tariff incorporating the market values resulting from the neutral fact-finder process set forth in subsections (b) through (h) of this Section." (220 ILCS 5/16-112(a)) (Emphasis supplied)

The years specified in subsections (b) through (h) of Section 16-112 are 2000, 2001, 2002, 2003, 2004, 2005 and 2006.

Section 16-112(n) of the Act provides in pertinent part:

"To the extent that the summaries list a sufficient number of actual contracts to represent a viable market and market values can be determined for more than one year, the electric utility shall offer customers that are obligated to pay transition charges contracts that establish for one or more years, up to a maximum of the lesser of five years or the remaining number of years until December 31, 2008, the market value or values to be used in calculating the customer's transition charges in such years and for which market value determinations have been made." (220 ILCS 5/16-112(n)) (Emphasis supplied)

Section 16-112(n) goes on to provide the procedure for establishing multi-year contracts for the payment of transition charges. It provides that contracts of one or two years duration are to incorporate the market values determined, as provided in Section 16-112, in the year in which the customer first gives notice of its desire to enter into a multi-year contract. It further provides that for contracts of two or more years duration, the market values to be used are those established in the year prior to the first year in which transition charges are collected under the transition charge

contract. Finally, Section 16-112(n) provides that the electric utility is not required to offer a multi-year contract "...for any year for which no determination of market value has been made, either by the neutral fact-finder or pursuant to a tariff filed by the electric utility."

When read together, it is clear the provisions of Section 16-112 provide customers with the option to enter into multi-year transition charge contracts, provided multi-year market values have been established under the market index tariffs filed by the utility or under the NFF process. In order for that option to have any meaning, it is necessary that a process be established for the determination of market value for each of the years specified in subparagraphs (b) through (h) of Section 16-112. Clearly, the market based index approaches put forward by Commonwealth Edison Company ("ComEd") and Illinois Power Company ("IP") in Docket 00-0259, 00-0395, and 00-0461 (Consolidated) do not calculate or establish or determine a market value for each year specified in subparagraphs (b) through (h) of Section 16-112.² (Affidavit of Robert R. Stephens, Exhibit A). Therefore, the NFF procedure offers the only opportunity for the determination of market values for each of the years between now and January 1, 2007. In the absence of a market based index tariff which establishes market values for each of those years, the NFF process offers customers the only opportunity to exercise the option granted to them, by the General Assembly, under Section 16-112(n).

²IIEC companies in those consolidated dockets have argued that because the market based index tariffs filed by the utilities there do not establish market values for each of the years specified, they cannot be adopted. It is the understanding of the IIEC companies in this docket that this proceeding has a limited purpose to determine whether the NFF procedure should be continued. IIEC will not address the "legality" of the tariffs proposed by the utilities since that issue is being considered in another docket.

Further, as a matter of law, the Commission cannot terminate the NFF process under circumstances in which the market based index fails to establish market values for each of the years specified in subparagraphs (b) through (h) of Section 16-112. Interpreting Section 16-112(m) so as to permit the termination of the NFF process under these circumstances would render Section 16-112(n) meaningless. Keeping in mind that the Commission cannot force modifications of the market based index tariffs on the utilities under Section 16-112(m), for all practical purposes, customers would most likely never have the opportunity to exercise the option granted to them under Section 16-112(n), because there would be no determination of market value and no possibility of a determination of market value for each of the years specified in subparagraphs (b) through (h) of Section 16-112. An interpretation of one part of a statute in a manner which renders another part of the statute meaningless, is prohibited. See, Illinois Bell Telephone Co. v. Illinois Commerce Commission, 283 Ill.App.3d 188, 669 N.E.2d 919, 933 (2nd Dist. 1996), holding that the Commission may not define one portion of the Public Utilities Act in a way that conflicts with a directive in another portion of the Act.

There are additional reasons for continuation of the NFF process as a matter of policy and as a matter of law. The market values established under Section 16-112 are used to establish the “price” of the power purchase option granted to customers under the terms and conditions of Section 16-110 (220 ILCS 5/16-110). Utilities are required to offer, as a tariff service or services, the right for a customer to purchase electric power and energy from the electric utility at a price equal to the sum of the market value established under Section 16-112 and used to calculate the customer’s transition charge, plus a fee for administrative costs. This Section contemplates that contracts for

such service may extend for more than one year. (See Section 16-110(b) which requires a "... 90 days notice for a purchase of more than one year's duration.) In the absence of market index tariffs which establish the values for multiple years, the NFF process offers the only opportunity for customers to have market values established for multiple year PPO contracts. Clearly the General Assembly contemplated the continuation of the NFF process under such circumstances. Elimination of the NFF process would eliminate the possibility of multiple year contracts under Section 16-110. Therefore, the Commission should not terminate the NFF process in this proceeding.

In addition, the Commission should consider the possibility that the NFF process should remain in effect not only to determine market values for multiple year periods, but to ensure that process continues to be a viable alternative to the market based index approach. For example, a sunset provision has been proposed in Dockets 00-0259, 00-0395, and 00-0461. Depending upon the length of the sunset, it will be necessary to have the NFF process in place to provide a viable alternative to the market based index tariffs in the event they are not reapproved by the Commission. Absent a perfect coincidence, it is unlikely that the Commission would be able to hire a neutral-fact-finder and allow him to make the appropriate calculations of market value in a fashion that would allow the NFF market value to match the end of the market based index market values. This is because the Commission must hire an NFF by April 30 of each year. (220 ILCS 5/16-112(b)). The NFF must make its calculation by July 30 of each year (220 ILCS 5/16-112(h)), and the market value as determined by the NFF takes effect on January 1 of the following year.

Finally, there are customers who would like to have the option for a multi-year transition charge contract and the possibility of a multi-year PPO contract. (See Affidavit of Robert R.

Stephens attached as Exhibit A). In order for these customers to continue to have the options and possibilities granted to them by the General Assembly, it is necessary for the NFF process to continue so that there is a mechanism available for determination of market values in each of the remaining years of the transition period which ends on December 31, 2006.

Some parties will no doubt suggest the market based index tariffs filed by the utilities will, all else being equal, be applicable for each of the years remaining in the transition period, and, therefore, the requirements of Section 16-112 have been met and there is no need to continue the NFF process. The tariffs in question do not determine a separate market value for each year of the remaining years of the transition period. (See the Affidavit of Robert R. Stephens attached as Exhibit A). Because they do not do so, it is necessary, at a minimum, that the NFF process continue in order to provide a mechanism for determining those market values. Under Section 16-112(m) the Commission can only terminate the NFF procedure for periods covered by the market based index tariffs. Since the tariffs do not cover the pertinent period, the Commission cannot terminate the NFF process.

Respectfully submitted,



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AFFIDAVIT

I, Robert R. Stephens, being duly sworn on oath, do depose and state as follows:

1. That I am a consultant with the firm of Brubaker & Associates, Inc., whose address is 1215 Fern Ridge Parkway, St. Louis, Missouri, 63141.

2. That I have been employed by the companies making up the Illinois Industrial Energy Consumers in this docket for the purpose of providing this Affidavit.

3. That I am familiar with the market based index tariffs filed by Commonwealth Edison Company and Illinois Power Company in consolidated Docket Nos. 00-0259, 00-0395, and 00-0461.

4. That said tariffs do not provide a means to determine market value for each of the years specified in Subparagraphs (b) through (h) of Section 16-112 of the Public Utilities Act (220 ILCS 5/16-112(b) - (h)).

5. That I am aware of customers who are interested in multi-year transition charge contracts which would establish and fix their transition charges for the contract period. I am aware of customers who are interested in the possibility of having multiple year PPO contracts. I am also

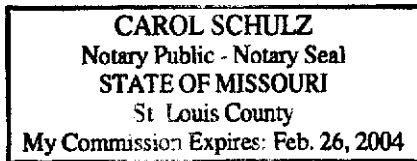
aware of customers who believe that the greater the number of options, available to customers as a group, the better.

6. In order to make multiple year transition charge contracts a viable option, and to continue the possibility of multiple year PPO contracts, it is necessary to have a separate market value established for each of the years described in the transition charge period which is presently scheduled to end on December 31, 2006.

FURTHER AFFIANT SAYETH NOT.

Robert R. Stephens
ROBERT R. STEPHENS

SUBSCRIBED AND SWORN TO before me, a Notary Public, on this 22nd day of February 2001.



Carol Schulz
NOTARY PUBLIC

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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On its Own Motion,

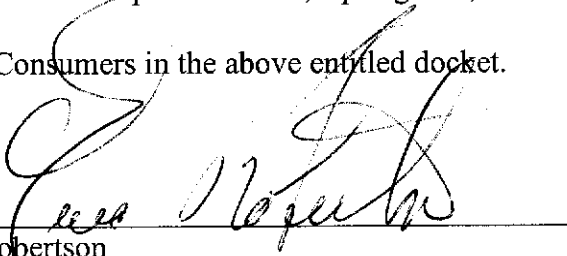
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NOTICE OF FILING

TO: Persons on Service List

PLEASE TAKE NOTICE that on February 23, 2001, IIEC filed via hand delivery with the Clerk of the Illinois Commerce Commission, 527 E. Capitol Avenue, Springfield, Illinois, 62701, the Comments of Illinois Industrial Energy Consumers in the above entitled docket.

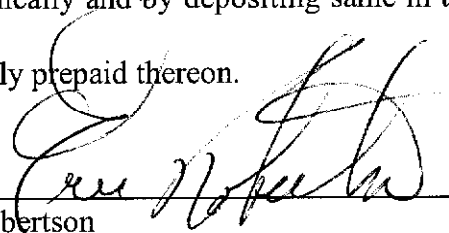

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PROOF OF SERVICE

STATE OF ILLINOIS :
 :
COUNTY OF MADISON :

SS

I, Eric Robertson, being an attorney admitted to practice in the State of Illinois and one of the attorneys for Illinois Industrial Energy Consumers herewith certify that I did on the 23rd day of February, 2001, hand file with the Illinois Commerce Commission, 527 E. Capitol Avenue, Springfield, Illinois, the Comments of Illinois Industrial Energy Consumers, and serve upon the persons identified on the attached service list, both electronically and by depositing same in the United States Mail, in Granite City, Illinois with postage fully prepaid thereon.

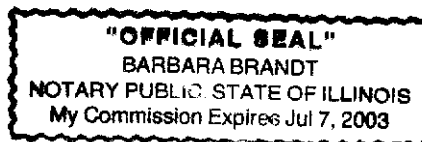


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SUBSCRIBED AND SWORN to me, a Notary Public, on this 23rd day of February, 2001.



Notary Public



DOCKET NO. 01-0053 - SERVICE LIST

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